FILED

No. 991197 JAN - 5 2000

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

Carl M. Spencer,

Petitioners,

v.

New York City Transit Authority, et al

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the
Second Circuit

Petition for Writ of Certiorari

Teddy I. Moore,
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15pp

Questions Presented

1. Whether "COSS" can be declared a corrupt enterprise under "Rico"

2. Whether, Chief Injustice, Mr. Ralph Winter can be brought to trial for racketeering, under "Rico" 18. U.S.C. 1961-1968

3. Whether there is a better resolution for the people than to shut down "COSS"

List of Parties

4. All parties do not appear in the caption of the case on the cover page. A list of parties to the proceedings in the court whose judgment is the subject of this petition is as follows.

Petitioners:

Carl M. Spencer

Respondents

Alan F. Kipper, Peter E. Stangel, Carmen Saudry, Stuart Lewis, Ronnie Sue Jaffe

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1999

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully prays that a writ of certiorari issue to review the judgments below.

OPINIONS BELOW

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is unpublished, as of yet.
The opinion of the United States district court was published at 1999 WL 51814 (EDNY, Jan. 14, 1999).

JURISDICTION

The date on which the United States Court of Appeals decided my case was 11/5/99.
No petition for rehearing was filed in this case.
The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The people have a right to due process and a right to access to courts along with the right of fair review of erroneous District Court decisions which is denied by COSS

STATEMENT OF THE CASE

BACKGROUND

1. This is another case in an endless row of injustice carried out by the Court of Appeals for the Second Circuit ("COSS").

2. Petitioner in this case will present to this Court facts that will demonstrate the corrupt nature of "COSS" and will request to review the facts in an attempt to restore justice and trust in the Second Circuit, and in the system.

3. Here are some facts concerning the operation of "COSS" as follows:

a) Appeals case 98-6047 Penitola, et al Vs. Immigration Naturalization Service.

In this case a class of immigrants from Nigeria who alleged discrimination against them in considering of applications for political asylum, filed suit against the INS in the Federal District Court for the Eastern District of New York. The case was dismissed without any judgment opinion, as common in this Circuit, and plaintiffs appealed the decision to COSS.

The clerk of court of COSS dismissed the case after submission of brief and joint appendix on the ground that plaintiffs have not presented an index of record.

(The index of record was submitted properly to the court in the "Joint Appendix" along with the Brief) plaintiff made a motion to the court to reinstate the appeal. But Chief Injustice Judge Ralph Winter, denied the petition. The outcome is that plaintiffs that were eligible to their day in court were denied their right arbitrarily by a district court judge, without any explanations, and they were not allowed to present their case to a panel of 3 judges on appeal. The rumors in the COSS are that every employee in the building of COSS may dismiss an appeal (a clerk, security guard, or firefighter, with no explanation, and it will be affirmed by Chief Injustice Judge Ralph Winter). And this is of course one of the

many reasons for the high rate of affirmance of lower court decision by COSS.

b) Federal case : Hirsh Weinberg et al Vs. George Langte III and U.S.A. 98 -CIV-0039 (LLM) S.D.N.Y.

This is a case brought by plaintiffs against clerk of court of "COSS" and the government. The case was brought by plaintiff U. S. citizens alleging that the clerk of court of "COSS" deprived them of due process, deprived them of fundamental rights to access to courts and for obstruction of justice and related corruption. They alleged also negligentce of the government that don't supervise properly this racketeer, as usual in the second circuit, the district court dismissed the complaint in four words: "The complaint is dismissed" no explanation was attached, no appeal could have been taken because the clerk would have refhused to accept an appeal or would short thereafter dismiss it, and chief injustice Judge Ralph Winter would have such decision by the clerk approved.

c) Appeal 97-9119 - AibinderVs. Wall Street.
This is a case brought by plaintiffs against an investment firm on Wall Street, alleging that defendant embezzled his money that was entrusted in defendants hands. The District Court dismissed the case on the threshold on the ground that plaintiff has "no cause of action" and "COSS" affirmed District Court decision. Petitioner may present many cases that will indicate that the COSS is a strong supporter of fraud and recketeers, and is a cancer in the legal system that should be removed.

d) 99-7587 Henry Eisler et al Vs. Union Bank, et al.
This is an appeal to D.C. on a decision to deny a motion under Rule 56. The motion was denied without any explanation. Just as a mere notation on the motion "Motion Denied". Petitioner appealed the decision to "COSS" and chief injustice decided to dismiss the case, without any explanation. He even managed to sign on to other injustices to affirm District Court decision.

e) Appeal 98-7858 Benjamin Wiburn Vs. Eastern Kodak.
This was a case that was brought by a plaintiff, African American, for discrimination on account of race. He alleged rampant discrimination across the board. On appeal, appellant presented an admission by defendant of mass discrimination on account of race, which should have overturned the obvious wrong decision by District Court, but again the "COSS" affirmed the decision based on the "same reason" which were not there.

f) Appeal 98-7758, Hofman Vs. City of New York, et al
Appellant alleged act of racketeering against her by plaintiffs. District Court dismissed the case on the threshold and COSS affirmed the appeal from the "same reasons" and even sanctioned appellant for a frivolous appeal. COSS adopted a unique definition of "frivolous appeal". According to COSS, a frivolous appeal is an appeal that has no chances to prevail. And since no case has any chances to prevail in COSS, all appeals in COSS are frivolous, but for the grace of God the COSS sanctions only excellent appeals as frivolous and all other are just "denied" or "affirmed". When COSS rarely remands a case to a Lower Court, it is returned as "affirmed and remanded" because nothing can be reversed. COSS hears no evil and sees no evil.

4. Based on the forgoing and other thousand of cases its clear that no terrorist, criminal, individual or otherwise caused greater harm and miscarriage of justice to the people than this den of racketeers so called "COSS".

5. It will be in the best interest of the people to shut down or dissolve the COSS in its entirety. In the interim, the undersigned will volunteer his services to accept appeals from any party and will mail them a "summary affirmance" of Lower Court decisions.

REASONS FOR GRANTING THE PETITION

1. There can not be a more compelling issue to be reviewed by this court, than the issues of corruption of the legal system. If this issue is not resolved properly all other issues which are a predicate, are moot.

2. Based on media reports this courts intends to review several cases based on "Rico" and this case should be consolidated with the other cases, and reviewed properly.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

Teddy I. Moore, esq.
160-05, Horace Harding
Flushing, NY 11365

Tel.: (718) 939-4966

Date: Jan. 5, 2000

APPENDIX "A"

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED AS PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FOR PURPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 5th day of November one thousand nine hundred ninety-nine.

Present: JAMES L. OAKES,
ROSEMARY S. POOLER,
ROBERT A. KATZMANN,
Circuit Judges.

CARL M. SPENCER,

Plaintiff-Appellant,

- v - 99-7212

NEW YORK CITY TRANSIT AUTHORITY, ALAN F. KIEPPER, Individually, and in his official capacity as President of the New York City Transit Authority, PETER E. STANGL, Individually, and in his official capacity as Chair of the New York City Transit Authority, CARMEN SUARDY, Individually, and in her official capacity as Vice President, Labor Relations, of the New York City Transit Authority, STUART LEWIS, Individually, and in his official capacity as Medical

Director of the New York City Transit Authority, RONNIE SUE JAFFE, Individually, and in her official capacity as Director, Employees Assistance Program for the Transit Authority,

Defendants-Appellees.

Appearing for Appellant: Teddy I. Moore, Flushing, NY

Appearing for Appellee: Daniel Topper, Office of the General Counsel, New York City Transit Authority, Brooklyn, NY

Appeal from the United States District Court for the Eastern District of New York (John Gleeson(, J.).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the order of said District Court be and it hereby is **AFFIRMED.**

Plaintiff Carl M. Spencer, an African-American employee of the New York City Transit Authority ("Authority" sued the Authority, alleging that its random drug testing policy (1) was selectively enforced to discriminate against employees who, like Spencer, filed discrimination complaints against the Authority; (2) was, in Spencer's case part of an illegal pattern of race discrimination; (3) caused an unreasonable search and seizure in violation of the Fourteenth Amendment; and (4) denied Spencer procedural due process. Spencer also alleged that his placement in a drug and alcohol treatment program and the Authority's disclosure of his drug and alcohol test results to unauthorized third parties stigmatized him and denied him a liberty interest without due process in violation of the Fourteenth Amendment. Finally, he claimed that the Authority's practice of monitoring him during his off-duty hours without paying him overtime violated New York law. Spencer brought claims under 42 U.S.C. §§ 1981 and 1983, Title VII of the Civil Rights Act of 1964, 42 U.S.C § 2000e et seq., Article 1 § 12 and Article V § 7 of the New York Constitution, and New York Statute.

From the time that Spencer filed his complaint on November 21, 1995, until July 2, 1997, he was represented by Attorney Eileen

Persky, who conducted discovery on his behalf. At a June 13, 1997, status conference before the assigned magistrate judge, Persky requested to be relieved for health reasons and plaintiff did not object. A minute entry for that date indicates that fact discovery was complete but expert discovery would be stayed. the magistrate judge attempted to arrange for assignment of counsel for Spencer from the court's pro bono panel, but the Clerk's office did not find an attorney willing to represent Spencer. Defendants subsequently filed a motion for summary judgment, and attorney Eric C. Firestone submitted appears in opposition to defendant's motion. Among other things, Firestone requested additional time for discovery. The district court (Gleeson, J.) denied plaintiffs' requests for additional discovery and granted defendants' motion for summary judgment. See Spencer v. New York City Transit Auth., 1999 WL 51814 (E.D.N.Y. Jan 14, 1999).

On appeal, Spencer argues principally that the district court erred by failing to (1) find an attorney to represent him, (2) submit his case to the jury, (3) extend the discovery deadline, (4) require defendants to respond to certain discovery demands, and (6) find that Spencer's Title VII claim was timely.

Because Spencer was represented by an attorney when he responded to the summary judgment motion, the district court had no obligation to find a different attorney to represent him. In addition, the district court correctly determined that Spencer had no satisfied the criteria we have established for reopening discovery in the face of a pending summary judgment motion because Spencer failed to explain "how further discovery would unearth any relevant information to support his allegation." See Spencer, 1999 WL 51814, at *7 (citing Hudson River Sloop Clearwater, Inc. v. Department of the Navy, 891 F. 2d 414, 422 (2d Cir. 1989)). Similarly, in his briefs on appeal, Spencer does not detail the discovery requests that the district court refused to enforce or explain how they are relevant to his claims. Therefore, this argument also lacks merit.

The district court thoroughly explored plaintiffs' legal claims and the record before it, and Spencer identifies no specific error in either the court's description of the record or its analysis of the law. Rather, he claims only that he presented the court with "a statement of material facts . . . affidavits. . . . documents [, and] detailed depositions

(about 400 pages) that support the complaint." Consequently, Spencer provided no basis for reversing the district court's conclusion that his claims lacked merit as a matter of law.

Finally, Spencer argues that the district court erroneously calculated the statutory limitations period for initiating a Title VII action by beginning it with the date he received a rigfht-to-sue notice from the EEOC rather than the later date on which he received a right-to-sue notice from the United States Attorney General. The time to sue on a Title VII claim ordinarily runs from the receipt of the first right-to-sue letter, not the second. See Soso Liang Lo v. Pan American World Airways, Inc., 787 F.2d 827, 828 (2d Cir. 1986). Because Spencer received his first right to sue notice in July 1995 and did not file his lawsuit until November 21, 1995, the district court correctly determined that his Title VII claims were time barred. See Cornwell v. Robinson, 23 F. 3d 694, 706 (2d Cir. 1994) (citing 42 U.S.C. § 2000e-5(e) and (f)). Although Spencer claims that the district court should have found that the statute of limitations was equitably tolled, he identifies no basis for equitable tolling.

Having considered all of Spencer's arguments and found that they lack merit, we affirm the decision of the district court.

FOR THE COURT:
KAREN GREVE MILTON, Acting Clerk
By:

_____
(signed)

APPENDIX "B"

PRELIMINARY STATEMENT

1. D.C.. has not explained why in this case the statute of Limitation should not be tolled or why he did not find a "De Minimus" Prima Facie case to proceed and thus the case should be remanded to D.C. for rendering an explanation.

SUMMARY JUDGMENT AND STATUTE OF LIMITATION

2. Under rule 56 of FRCP, Summary Judgment may not be granted unless "The Pleading, Depositions, answers to Interrogatories, and Admissions on File, together with the affidavits, if any, shows that the moving party is entitled to a judgment as a matter of law" (See Celotex Corp. v. Catreet 477 U.S. 317 (1986) in deciding the motion for Summary Judgment, a court must resolve all ambiguities and draw all reasonable references against the moving party (See, Matsushita Elel Indus Co. v. Zenith Radio Corp 475 U.S. 573, 587 (1986)).

3. If there is any evidence in the record from any source from which a reasonable inference could be drawn in favor of non moving party, Summary Judgment is improper (See, Chambers vs. TRM Centers Corp 43 F 3d 29, 37 (2nd Cir 1994), and thus the Dismissal under Rule 56 was wrong.

4. Plaintiff filed a timely charge he alleges a continuing violation of his right to be free of discrimination regarding his employment and in the alternative if this court does not find a continuing violation, thus the deadline for filing should be equitably tolled as a matter of fairness.

5. Where a plaintiff alleges employment discrimination and the complaint is a proper complaint the statute of limitation does not begin to run until after the last discriminatory act in furtherance of the policy (Van Zant vs KLM Royal Dutch Airlines 80 F 3d 708, 713 (2nd cir 1996)).

6. A plaintiff who brought action for Title VII violations of Civil Rights must file a charge with the U.S. Equal Employment Opportunity Commission (EEOC) within 300 days (Butts vs. City of New York 990 F 2d 1397 1401 (2nd cir 1993)).

7. However, the U.S. Supreme Court held that a timely EEOC filing is not a jurisdictional prerequisite but is a requirement that is subject to "Waiver, Estoppel, and equitable tolling" (Zipes vs. Trans World Airlines Inc., 455 U.S. 385, 392 (1981)).

8. To determine whether plaintiff was aware of facts that would constitute notice creating an obligation for diligence in action or it can be tolled also as a matter of "Fairness" for example, when plaintiff has actively pursueed judicial remedies by filing a defective pleading during statutory period (Gibson vs. NYC Police Dept. 1998 U.S. Dis. Lexis 9246 at P.U. (S.D.N.Y.) or when employers conduct makes plaintiff unaware to his rights (Dillman vs. Combustion Engineering in 784 F 2d 57, 60 (2nd cir 1986) in this case he was mislead by Attorney General.

9. Plaintiff presented his Prima Facie case for employment discrimination and thus entitled to her day in court (St. Mary's Honor CTR vs. 509 U.S. 502, 510 (1993) or Taxas Dept. of Community Affairs vs Burdline 450 U.S. 248, 253 (1981) and defendant must prove that his reasons are not a pretext for discrimination (See. Gallo vs. Purdential Services 22F 3d 1219, 1223-24 (2nd cir 1995)).

10. The burden to establish a Frima Facie case is "De Minimus" O'Conner vs. Consolidated Coin 517 U.S. 308, 116 ct 1307, 1310.

11. Usually cases for discrimination rest on cumulative weight of circumstantial evidence (Rosen vs. Thornburgh 928 F 2d 528, 533 2d cir 1991) which were not fully presented.

CONCLUSION

The Appeal should be granted.